IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8080 of 2003
with
SPECIAL CIVIL APPLICATION No 14806 of 2003
with
SPECIAL CIVIL APPLICATION No 14863 of 2003
with
SPECIAL CIVIL APPLICATION No 14865 of 2003
with
SPECIAL CIVIL APPLICATION No 14870 of 2003
with
SPECIAL CIVIL APPLICATION No 8081 of 2003
with
SPECIAL CIVIL APPLICATION No 8355 of 2003
with
SPECIAL CIVIL APPLICATION No 8356 of 2003
with
SPECIAL CIVIL APPLICATION No 9561 of 2003
with
SPECIAL CIVIL APPLICATION No 16676 of 2003
TO
SPECIAL CIVIL APPLICATION No 16705 of 2003
with
SPECIAL CIVIL APPLICATION No 8082 of 2003
with
SPECIAL CIVIL APPLICATION No 17767 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

CHANDRAKANT TAPUBHAI VYAS

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR HR PRAJAPATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 11/02/2004

COMMON ORAL JUDGEMENT

1. The question arises for consideration by this Court in this group of petition is: Whether statutory liability is attracted for payment of gratuity as per section 4 (2) of Payment of Gratuity Act, 1972 [hereinafter referred to as the Act] on account of subsequent revision of payscale after the date of retirement or not?

1.1 The second question which incidentally arise for consideration of this Court is: What shall the consequential order in view of subsequent change in the circumstances from the date of filing of the application before the Controlling Authority under the Act till the pendency of this petition, more particularly when the same relates to retiral benefits of the employees?

2. Short facts of the case appears to be that the respondent concerned in all these petitions were employees of Gujarat State Road Transport Corporation, the petitioner herein. They retired from the service during the period from 1.8.1997 to 31.7.2000. There is no dispute on the point that on the date when the concerned respondent retired from service, there was no revision of payscale. There is also no dispute on the point that on the basis of their last pay on the date of

retirement, all retiral benefits including the gratuity amount were paid by the petitioner-Corporation to the respondent-employees.

2.1 However, it appears that in the month of August 2000, a settlement arrived at between the Union of Class III and Class IV employees with the petitioner-Corporation under section 2(d) of the Industrial Disputes Act for the purpose of revision of the payscale providing for different modalities and also for fixing the cut-off dates for revision of payscale. As per clause 4 of the said settlement, the payscales are to be revised from 1st August 1997 and as per clause 12 of the said settlement, if any discrepancy arises on account of the implementation of the settlement, the same shall be decided within a period of three months by the Vice-Chariman as well as Managing Director and the representative of the recognized Unions. It further appears that thereafter, on 20.1.2001, after undergoing the formalities and after deliberations, a circular came to be issued by the petitioner Corporation for giving effect to the aforesaid settlement with further mode of making payment of the arrears and other consequential benefits. It was interalia provided in the said decision of the petitioner-Corporation that the arrears of salary for the period from 1.8.1997 to 31.7.2000 shall be paid in installments and out of the said arrears, the amount of Rs.5000/- shall be paid to each employee concerned by March 2002 and the outstanding arrears shall be paid by 30th November 2002. As per clause 4, it was mentioned that in respect of eligibility of payment of gratuity to the employees who retired during the period from 1st August 1997 to 31st July 2000, the same shall be resolved by 15th March 2002. Even it was also mentioned that a decision will be taken by 15th March 2002 for enhancing the gratuity to Rs.3,50,000/- from the existing limit of Rs.75,000/-.

2.2 The respondent concerned in all these petitions approached the Controlling Authority under the Act complaining that the amount of gratuity as required under the Act on account of the revision of the payscale is not paid. It was resisted by the petitioner Corporation on he ground that on the date when the concerned employee retired from the service of the petitioner Corporation, gratuity was already paid as per the pay-scale then in existence. However, ultimately, the Controlling Authority passed orders directing the petitioner-Corporation to make the payment of additional amount of gratuity w.e.f. 1st August 2000 with interest at 10%. The petitioner-Corporation has carried the

matter before the appellate authority under the Act. However, the said appeals ultimately came to be dismissed, and hence the present petitions.

3. Mr. Rawal, the learned counsel appearing for the Corporation in the respective petitions submitted interalia that on the date when the concerned employees retired from service, the gratuity amount was calculated and accordingly paid, and, therefore, no right can be said to have been accrued on account of subsequent revision of payscale after the date of their retirement. However, the learned counsel appearing for the Corporation fairly submitted that the Corporation, as a part of the subsequent revision of the payscale, has in principle decided to pay gratuity, but since this would result into huge financial burden, the payment of the same is proposed to be made in installments. It was submitted that until the settlement is arrived at, even in respect to the payment of gratuity, may be by instalment or otherwise, there is no liability to pay gratuity, and, therefore, the order passed by the Controlling Authority as well as the Appellate Authority deserves to be interfered with. Mr. Rawal also submitted that as such, during the period from 1.8.1997 to 31st July 2000, there may be number of employees who have retired, and the Corporation has not paid gratuity immediately after revision, but as per the settlement, gratuity shall be paid stepwise, i.e. by installments. Therefore, merely because the respondent-employees approached the authorities, they cannot assert their rights on a higher pedestal which may be otherwise not available under law. Mr. Rawal also submitted that in any case, the authority could not have ordered for payment of interest and that too at 10%. He, therefore, submitted that the orders passed by both the authority deserves to be quashed.

4. On behalf of the employees concerned, Mr. Prajapati, the learned counsel who appears in all the matters submitted interalia that when a decision is taken to revise the payscale from 1st August 1997 and once the payscales are revised from the said date, payment of gratuity is a consequence thereof. He also submitted that since the payment was not made, the concerned employees who are respondents herein, were justified in approaching before the authorities under the Act, and since the liability was there and payment was not made, interest is rightly awarded. However, Mr. Prajapati, under instructions of his clients submitted that pending the appeal, the amount of gratuity with interest has already been deposited by the petitioner-Corporation and

the same is lying with the Controlling Authority. This Court, pending the petition in majority of the matters, had passed orders for staying withdrawal, and therefore, he submitted that since the matter pertains to payment of retiral dues, if the concerned employees are paid the principal amount at a time by permitting withdrawal, the concerned employees who are respondent herein may not press for the payment of interest as ordered by the authorities under the Act.

5. The first question which is required to be considered is the scope and ambit of section 4 (2) of the act. The said sub-section reads as under:-

"(2). For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen day's wages based on the rate of wages last drawn by the employee concerned:

xxx xxxx xxxx xxxx xxx xxx "

5.1 The language used by the legislature is the "rate of fifteen day's wages based on the rate of wages last drawn by the employee concerned". There is no dispute on the point that on the date when the respondent employees retired from service, gratuity is not paid to them on the rate of wages last drawn. On the date on which the employee concerned retired, there was no revision of payscale in existence. Section 7 of the Act provides for the determination of the amount of gratuity. Sub-section (3) of section 7 provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable. Sub-section (3-A) provides that if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, with simple interest at such rate not exceeding the rate notified by the Central Government from time to time. Sub-section (4) of section 7 provides that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to admissibility of any claim under the Act, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity. Clause (c) of sub-section 4 of section 7 provides that the controlling authority shall after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or

matters in dispute and if, as a result of such inquiry, any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount. Sub-section (7) of section 7 provides for appeal. Therefore, it appears that if there is non-payment of the amount of gratuity, then the power is attracted. Similarly, if there is any dispute on the question of admissibility of any claim of gratuity, then also, the power would be attracted.

6. The employees concerned in he present case asserted their right for admissibility of the payment of gratuity upon revision of payscale whereas the employer-petitioner has denied the liability on the question of not providing by way of settlement expressly for payment of gratuity. As such, on a conjoint reading of sections 4 and 7 it appears that the jurisdiction of the controlling authority would be attracted only if there is statutory liability to pay the amount of gratuity, and there is non-payment by the employer concerned. Further, even if the power under section 7 are construed for entertaining the claim of gratuity in purported exercise of the right to receive gratuity, then also the controlling authority, while exercising the admissibility of the claim will have to decide as to whether such claim is legally admissible or not. At the time when such aspect is to be considered, the authority shall be guided by the provision of the Act for accrual of liability to pay the gratuity and for accrual of the right to receive the amount of gratuity.

7. If the aforesaid scope and ambit of the power of the authority is considered and thereafter if the matter is examined, it appears that the authority came to be guided by the fact of revision in the payscale and therefore it has taken a decision that liability has accrued. As such, in the matter of revision of payscale, it may have various facets. No doubt, employees concerned of any institution may have a right to represent and may have a right to participate in the deliberations and discussions and also, to some extent, in the finalization in the matter of payscale, however, the decision to revise the payscale is essentially a policy decision of the employer, taking into consideration various aspects including the financial, the cost structure, cost of living, profit generation, reserves/surplus and such other aspects. At the time when the decision is taken for revision of the payscale by an employer, more particularly in the present case a Public Corporation, it may include various packages and it may also include various modes of making payment.

Eventhough principally a decision is taken for giving effect to the revision of the payscale, it may simultaneously include a stepwise payment or disbursement, with a view to see that there is no financial burden at a stroke, which may adversely create other financial complications. There can be various modes for giving effect to the revision of payscale. Such aspects are not unknown in the matter of policy decision for revision of payscales. Therefore, if the matter is examined accordingly, the decision for revision of the payscale w.e.f. 1st August 1997 is taken, but for payment of arrears for the period from 1st August 1997 to 31st July 2000, the decision interalia provides for stepwise payment by installments. So far as the payment of gratuity is concerned, the decision was to be taken for revision of the limit from Rs.75,000/- to Rs.3,50,000/_ by 15th March 2002, and even for the gratuity amount in respect of the employees who retired from 1st August 1997 to 31st July 2000, the said aspect was to be resolved subsequently by 15th March 2002. Therefore, it appears that the aforesaid decision for revision of the payscale is a composite decision, and one of the facets was to revise the payscale from 1st August 1997 onwards, but arrears for the period from 1997 to 2000 was by to be paid by installments. For payment of gratuity, the said aspect was also postponed upto 15th March 2002 and in any event, it was not decided to make the payment of gratuity at the time when the settlement came to be entered into. Therefore, on 1st August 2000 when the decision is taken for revision of payscales, it cannot be said that an enforceable liability has accrued for recovery of the arrears as well for admissibility of the gratuity. Had it been a case where out of a composite decision the settlement was also arrived at for payment of all arrears at a time and also payment of gratuity, possibly the matter could have been differently viewed but in he present there is no dispute on the point that payment of gratuity was not a part of the settlement and came to be deferred. At this stage, it is required to be recorded that Mr. Rawal for the petitioner-Corporation, during the course of his submissions, has stated that even for payment of gratuity, now in the year 2004 the settlement is arrived at to pay gratuity to the employees who retired from 1st August 1997 to 31st July 2000 based on the revised payscales but the modality of payment and its disbursement shall be stepwise, with a view to see that there is no financial burden at a stroke to the Corporation. He submitted that since the exact Minutes of the Meeting are not available, he is unable to produce the same. However, it is apparent that on the date on

which the Controlling Authority under the Act passed the order, the decision for revision of the payscale did not include the mode of payment of gratuity and even for admissibility of the gratuity. It may be that on account of the revision of the payscale, consequently there may be liability of payment of gratuity in future, but merely because a decision is taken for revising the payscale, but its effect was not given and for gratuity no decision was taken, it cannot be concluded that gratuity was admissible to the employees concerned as on 1st August 2000, and, as a consequence therefore, the order passed by the Controlling Authority under the Act cannot be sustained in the eye of law. It appears that the controlling authority proceeded on the basis that there is an agreement to revise the payscale in principle but it has not considered its actual effect to be given by mode of payment and also the liability to pay the gratuity. It may be that on account of subsequent decision of the Corporation with the Union by way of settlement, gratuity is made admissible and the effect is given for by disbursement stepwise, but in any case, until such policy decision is taken and its effect is actually given, the controlling authority was not justified in concluding that the gratuity was admissible as on 1st August 2000. As a consequence of the same, the order passed by the Controlling Authority directing payment of interest cannot be also sustained in the eye of law.

8. In view of the aforesaid discussion, the order passed by the Controlling Authority and the order passed by the Appellate Authority confirming the same in all these petitions, deserve to be quashed and set aside.

9. However, the peculiar circumstance has arisen in the present group of cases inasmuch as it was required under the law pending the appeals, the amount as ordered by the Controlling Authority is already deposited by the petitioner-Corporation with the authority, and the said amount is ofcourse including the interest. Pending the petitions, the said amount has remained with the controlling authority, and pursuant to the interim order passed by this Court in the petition concerned, withdrawal was stayed. However, in view of the aforesaid statement made by Mr. Rawal during the course of the hearing, when the Corporation has also taken a decision for admissibility of the gratuity and its payment thereof by instalment, as on today, it cannot be said that the gratuity to the employees concerned would not be admissible. Since the matter is pertaining to payment of gratuity by way of retiral dues to the employees and when

the payment has already been deposited with the controlling authority under the Act and in view of the declaration made by Mr. Prajapati for the employees concerned that they are not insisting for the interest if the principal amount deposited with the controlling authority is permitted to be withdrawn by the employees concerned, I find that no useful purpose would be served in remanding the matters to the appellate authority and/or controlling authority for the purpose of reconsidering the issue again. As such on account of the above referred subsequent change in the circumstances, the admissibility of gratuity amount is admitted on account of subsequent decision of the Corporation itself. Further, if the matters are remanded to the appellate authority for reconsideration of the issue and to render a decision afresh in view of the aforesaid change in the circumstances, the only consequence would be that the Corporation may get back the amount which thereafter will be required to be paid by installments as per its decision. Had it been a case where the liability to pay the gratuity were not in existence, the matter would have been viewed differently, but when the Corporation itself has taken a decision to pay gratuity but by installments, I find that considering the peculiar facts and circumstances, no serious prejudice will be caused to the Corporation if the employees concerned is allowed to withdraw the principle amount of gratuity lying with the controlling authority and the amount forming interest can be ordered to be refunded to the Corporation.

10. In view of the aforesaid, these petitions are allowed, and the orders passed by the controlling authority as well as the appellate authority impugned in each of these petitions are quashed and set aside. However, it is further directed that the respondent-employees in the respective petitions shall be allowed to withdraw the principal amount as payment of gratuity, and the amount of interest out of the amount deposited by the Corporation shall be refunded to the Corporation by the Controlling Authority forthwith. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no orders as to costs.

Registry is directed to keep a copy of this order in each of the aforesaid matters.

[JAYANT PATEL, J.]

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